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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 NANCY GILL,

12 v.
13 Plaintiff,

14 MICHAEL MAGAN, et al.,

15
16 Defendants.

CASE NO. C19-860 MJP

ORDER GRANTING
DEFENDANTS' MOTION TO
COMPEL

17 This matter comes before the Court on Defendants' Motion to Compel. (Dkt. No. 51.)

18 Having reviewed the Motion, Plaintiff's Opposition (Dkt. No. 53), the Reply (Dkt. No. 61), and
all supporting papers, the Court GRANTS the Motion.

19 **BACKGROUND**

20 Defendants seek production of a document that Plaintiff's expert reviewed in forming his
opinions. The document is entitled "Nancy Gill Complete Timeline (003) – Nancy Gill Case
Timeline of Events." Plaintiff's counsel states that the document contains "a compilation of
events derived from police reports." (Declaration of Darryl Parker ¶ 5 (Dkt. No. 54).) Plaintiff

1 did not produce this document to Defendants and now claims that it contains attorney work
 2 product.

3 ANALYSIS

4 A. Defendants Motion is Timely

5 The Court may extend a case deadline if the moving party shows that it could not
 6 reasonably meet the deadline despite its diligence. Fed. R. Civ. P. 16(b); Johnson v. Mammoth
 7 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). “Rule 16(b)’s ‘good cause’ standard
 8 primarily considers the diligence of the party seeking the amendment.” Johnson, 975 F.2d at 609.

9 Although Defendants did not ask leave to file this Motion after the discovery motion
 10 deadline, they sufficiently addressed the issue in their reply. As Defendants have demonstrated,
 11 they diligently sought production of the timeline from Plaintiff, and the delay in filing the
 12 Motion is excusable. The Court finds the record before it evidences sufficient good cause to
 13 allow this late filing.

14 B. The Document Must be Produced

15 Rule 26(a)(2)(B)(ii) requires an expert report to contain and disclose “the facts or data
 16 considered by the witness in forming them.” “The disclosure obligation extends to any facts or
 17 data ‘considered’ by the expert in forming the opinions to be expressed, not only those relied
 18 upon by the expert.” Fed. R. Civ. P. 26(a)(2)(B) Adv. Comm. Note to 2010 Amendment. There
 19 are exceptions to this disclosure obligation. Rule 26(b)(3) excludes from disclosure trial
 20 preparation materials including certain expert materials. See Republic of Ecuador v. Mackay,
 21 742 F.3d 860, 866 (9th Cir. 2014). But “a party may still obtain discovery of trial preparation
 22 materials under Rule 26(b)(3) if they are otherwise discoverable and the party shows that it has a
 23 ‘substantial need’ for the materials and ‘cannot, without undue hardship, obtain their substantial

1 equivalent by other means.”” Id. (quoting Fed. R. Civ. P. 26(b)(3)(A)). And Rule 26(b)(4)(C)
2 permits discovery of “communications between the party’s attorney and any [expert required to
3 produce a report] . . . to the extent that the communications . . . identify facts or data that the
4 party’s attorney provided and that the expert considered in forming the opinions to be
5 expressed.” Fed. R. Civ. P. 26(b)(4)(C); see Mackay, 742 F.3d at 866.

6 The Court finds production of the timeline appropriate. The document, even if prepared
7 by counsel, is a timeline that contains “a compilation of events derived from police reports.”
8 (Parker Decl. ¶ 5.) The timeline thus contains facts and data on which the expert relied in
9 forming his opinions. It must be produced under Rule 26(a)(2)(B) and (b)(4)(C). The Court
10 therefore GRANTS the Motion and ORDERS the production of the timeline within 5 days of
11 entry of this Order.

12 **CONCLUSION**

13 Defendants have demonstrated that they should be entitled to review the timeline on
14 which Plaintiff’s expert relied in forming his opinions, and that their motion should be accepted
15 as timely filed. The Court GRANTS the Motion and ORDERS production of the timeline within
16 5 days of entry of this Order.

17 The clerk is ordered to provide copies of this order to all counsel.

18 Dated January 6, 2021.

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20 Marsha J. Pechman
United States District Judge
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